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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|------------------------------------|---------------------------|------------------|
| 10/072,640 | 02/06/2002 | Juan Ignacio Benetti Diaz De Brito | ACME-001 | 3253 |
| 24353 | 7590 | 03/10/2005 | | |
| BOZICEVIC, FIELD & FRANCIS LLP 1900 UNIVERSITY AVENUE SUITE 200 EAST PALO ALTO, CA 94303 | | | EXAMINER THANH, LOAN H | |
| | | | ART UNIT 3763 | PAPER NUMBER |

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/072,640 | Applicant(s) BENETTI DIAZ DE BRITO ET AL. | |
| | Examiner LoAn H. Thanh | Art Unit 3763 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 25-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>05/13/02</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of group I in the reply filed on 07/29/04 is acknowledged. The traversal is on the ground(s) that That the search and examination of an entire application can be made without a serious burden even though it includes claims with distinct inventions. This is not found persuasive because the restriction is made based on distinct inventions and not whether the search is burdensome. Applicant is reminded that one patent is issued for one invention. Further, the classification system has designated these inventions as distinct in itself since they are given different classification sub class or subclass.

Claims 25-39 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group II, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 07/29/04.

The requirement is still deemed proper and is therefore made FINAL.

An action on the merits now follows.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 05/13/02 was filed after the mailing date of the application on 02/06/02. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the adhesive patch (cl. 8) , probe-like (cl. 9) , the penetration means (cl. 10) and user keypad (cl. 11) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 11-14-19, 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Owen et al. (USPN 6,673,594).

Owen et al. discloses a system comprising at least one temperature sensor (T1, T2, T3), means for selecting the temperature (figure 1, 28, 31) comprising a keypad/keyboard, means for comparing said sensed with said selected organ temperature (cols. 35-36), at least one source of fluid 15a, 15b, bicarbonate (see figure 1), means for regulating the temperature (microprocessor), and a mechanism for pumping (peristaltic or roller). Owen et al. disclose at least one fluid conduit (see figure 2), a plurality of fluid sources, and a display for temperature data (see figure 1 or monitor). Owen et al. further discloses the temperature being independently regulated (See col. 9 lines 16-21). Owen et al. disclose the first and second containers having different fluid with 2 different temperature. Specifically that one temperature is lower than the other.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10, 20,22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owen et al. (USPN 6,673,594).

Owens et al. disclose the invention as substantially claimed. See above.

With respect to claims 8-10, Owens is silent to the specific structure of the at least one temperature sensor. However, it would have been an obvious design choice to one skilled in the art of temperature sensors to modify the temperature sensor to an adhesive patch or a probe-like configuration or a penetrating means lacking any criticality of results. The temperature sensor of Owens et al. would perform equally well as the temperature sensor of applicant's, which is to sense temperature.

With respect to claim 20. Owens discloses an alarm for pressure sensors exceeding certain limits. Owens et al. is silent to an alarm for temperature sensors. It would have been obvious to one of ordinary skill in the art of alarms to modify the device of Owens et al. to provide an alarm for temperature sensors since it has been disclosed by Owens et al. to monitor and control viability of organs with specific ranges of temperatures which would not harm the organ.

With respect to claims 22-24, Owens et al. disclose providing sources of fluid with different temperatures. Specifically Owens et al. disclose perfusing hypothermic

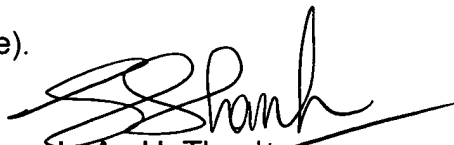
solutions where a first solution has a temperature and a second solution with a temperature , which is lower than the first temperature (9:16-20). It would have been obvious to one of ordinary skill in the art of organ perfusion to provide a slow decrease in temperature so as to not shock the organ into cell death.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (571) 272-4966. The examiner can normally be reached on Mon. - Fri. (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


LoAn H. Thanh
Primary Examiner
Art Unit 3763